

ENVIRONMENTAL QUALITY COUNCIL

May 8, 1998

Original Minutes with Attachments

COUNCIL MEMBERS PRESENT

Rep. Vicki Cocchiarella, Co-Chair
Sen. Ken Mesaros, Co-Chair
Rep. Haley Beaudry
Sen. Vivian Brooke
Sen. William Crismore
Sen. Lorents Grosfield
Rep. George Heavy Runner

Sen. Barry Stang
Rep. William Tash
Mr. Bill Snoddy
Mr. Jerry Sorensen
Ms. Jeanne-Marie Souvigney
Mr. Gregory Tollefson

COUNCIL MEMBERS EXCUSED

Rep. Kim Gillan
Ms. Julie Lapeyre

STAFF MEMBERS PRESENT

Mr. Todd Everts
Ms. Kathleen Williams
Mr. Larry Mitchell

VISITORS' LIST

Attachment #1

COUNCIL ACTION

- Approved minutes from the March 13, 1998 meeting.
- Requested that the FWP provide a thorough briefing of the Programmatic EIS, the Fisheries Document and the State Parks Document.
- Requested that the DEQ provide further updates on the Underground Storage Tank concerns.
- Recommendations be considered for the Montana University System Water Center.
- Plan some action or time to address the Kendall Mine Water Issue.
- Set next meeting date for June 26th in Dillon.

I CALL TO ORDER AND ROLL CALL

CO-CHAIR MESAROS called the meeting to order at 9:00 a.m. Roll call was noted; REP. GILLAN and MS. LAPEYRE were excused. **(Attachment #2.)**

II ADOPTION OF MINUTES

Motion/Vote: SEN. MCCARTHY MOVED THAT THE MINUTES OF THE MARCH 13, 1998 EQC MEETING BE APPROVED AS WRITTEN. THE MOTION CARRIED UNANIMOUSLY.

III ADMINISTRATIVE MATTERS

► New Staff Person

MR. EVERTS explained that 28 applications were received for the staff position. Sixteen applicants were interviewed and this narrowed the selection process to three individuals. The selection for the new staff person will be made next week and the individual will be introduced at the next EQC meeting in June. This new staff person will be working on the growth study.

► Budget Update

MR. EVERTS provided Council members with a copy of the budget for the next biennium, **Exhibit 1**. He explained that the budget is the same as this biennium with exception of a \$1400 increase for meeting room rental. All interim committees will need to find meeting spaces during the Capitol restoration project. MR. EVERTS added that \$26,000 of this budget comes from the Resource Indemnity Trust Fund. The Fund's interest proceeds are low. An update on the Fund was provided at the last meeting and another update will be provided before the next legislative session. There may be a move by Legislative Council to replace the \$26,000 with General Fund appropriations, which is how the other interim committees are funded.

Sheriff Strandell, Cascade County, welcomed Council members to the Great Falls Regional Prison Education Facility. He remarked that the public meeting room is used quite often. He invited Council members to a tour of the building following the meeting.

► Legislative Audit Committee

MR. EVERTS stated that the Council has received notification from the Legislative Audit Committee that the questions submitted by this Council for the DEQ's Permitting and Compliance Division Audit will be addressed in the audit, **Exhibits 2** (Council letter to Audit Committee) **and 3** (Audit Committee letter to Council).

► Legislative Interim Committee Reorganization

MR. EVERTS reported that the Legislative Council, through a Legislative Improvement Subcommittee, is looking into reorganizing interim committees. He referred to a handout addressing this matter, **Exhibit 4**. Sen. Mike Halligan asked the Legislative Services Division staff to identify interim committee staffing problems and propose solutions to the problems. The first page contains issues that the staff has seen and

that the legislators have brought to the staff. Page two contains a chart which would dissolve the Administrative Code Committee and the responsibilities for rule oversight would then go to seven general subject matter committees. Page three shows the makeup of the membership for standing committees. Page four shows the agencies for which the legislative committees would provide oversight.

CO-CHAIR COCCHIARELLA further explained that the Legislative Improvement Subcommittee would meet next week to discuss issues involving lack of staff and the identified interim problems. This process started when the Legislative Council met at the beginning of the interim and looked into addressing the resolutions and priority list of studies set out by the Legislature. It was impossible to accomplish all that was requested.

SEN. MCCARTHY suggested that on the last page of the handout under “The Rules” the word “must” be changed to allow for more flexibility.

CO-CHAIR MESAROS questioned whether this matter would ultimately be decided by the Legislature. MR. EVERTS explained that there would be legislation, with the endorsement of the Legislative Council, on the changes since this involves statutory committees.

SEN. GROSFIELD remarked that the changes made a lot of sense, especially having legislators serve on committees within their area of interest and specialization. This is very important due to the approaching term limits. He added that giving every member of the Legislature rule oversight responsibility was a good idea. He raised a concern in that the Business and Labor Committee would not have members from one of the Session Appropriations Committees. He believed it was necessary to integrate budget and policy issues. He saw this new concept as a way to provide a much more professional approach to dealing with the issues the Legislature needed to address.

CO-CHAIR COCCHIARELLA disagreed in that she saw a problem with limiting membership by which committee the legislator served on during the session. She believed legislators needed to know as much as they possibly could and therefore should serve on various committees and be able to seek out areas where they can learn and be more useful to their constituents. She also believed that the members of the Appropriations and Taxation Committees had too much power and control in the process.

SEN. GROSFIELD remarked that since future legislators would have the maximum of an eight year institutional memory, specialization would be very helpful. He added that legislators serve on more than one committee.

CO-CHAIR MESAROS recommended that all Council members review the proposed changes and submit recommendations and concerns to staff or CO-CHAIR COCCHIARELLA or, if possible, attend the Legislative Improvement Subcommittee meeting set for next week..

IV SUBCOMMITTEE REPORTS

Water Policy - Rep. Tash/Sen. McCarthy

REP. TASH stated that the Water Policy Subcommittee held its meeting the previous day. The agenda was expanded due to the Kendall Mine concerns. Interested parties brought valid concerns to the Subcommittee; however, due to the short notice there hadn't been the opportunity to notice other parties involved with the issues. There was discussion regarding scheduling a meeting near the site for either the Water Policy Subcommittee or the full Council. He recommended that the meeting be set as soon as possible.

They heard a proposal from the Montana Department of Transportation (DOT) in regard to disposing of lands which they have acquired, sometimes these are remainder interests in highway right-of-way acquisitions. They would like these land remainders to have the conservation easement stipulation. A lot of these lands are required for wetland mitigation. Subcommittee members raised concerns about the possibility of incorporating remainder parcels into adjacent landownership. Offering these parcels with an encumbrance limits the use of the land. Open space can be guaranteed by productive agriculture. A concern mentioned was the potential for a particular group of individuals to acquire a large amount of remainder tracts and keep them out of production. The Department was advised to further review the issues involved and incorporate same in their draft legislation.

The Department of Environmental Quality (DEQ) provided reports on sufficient credible data in the procedures of the TMDL HB 546 implementation. These reports included the impaired water listing standards and schedules.

MS. WILLIAMS has been working with Mr. Jim Paugh of Bozeman on water interference concerns, which are particularly related to growth management. He is scheduled to attend the June meeting in Dillon. His concerns are quite similar to the water interference concerns near the Kendall Mines.

The completion of the Fish, Wildlife and Parks (FWP) Water Leasing Program report to the Legislature will likely result in draft legislation. The program is scheduled to terminate in December of 1999.

They will be scheduling some TMDL sites for the June meeting. They will try to make arrangements for Thursday so all members of the Council will be able to visit the sites.

SEN. MCCARTHY remarked that they would like to set aside a time for the Water Policy Subcommittee or the full Council to visit the Kendall Mines. She suggested adding a meeting to the schedule. The issues involved in this project are ongoing concerns.

CO-CHAIR MESAROS remarked that the Kendall Mine issue would be discussed later this afternoon under Other Business.

SEN. GROSFIELD asked if the DOT was buying more land than they needed. REP. OHS explained that highway construction oftentimes disturbed wetlands. The federal government mandates that they trade this land for wetlands which they own. There has to be an assurance that the land will not be developed. The DOT has been put into the position of managing the lands. Conservation easements would revert the lands back to previous owners or interested parties. The Agricultural Committee was concerned about purchasing land through eminent domain and then placing an easement on it which would take the land out of production. The DOT is looking into legislation which would allow them to place easements on the lands and return them to the previous owners. This needs to be discussed in the up front negotiations of the right-of-way purchases.

SEN. MCCARTHY commented that it seems that the DOT overbought land and was dictating the use of the land to the landowner. MR. TOLLEFSON added that a conservation easement can insure and encourage agricultural production.

► *Growth Subcommittee - Mr. Sorensen/Mr. Tollefson*

MR. SORENSEN remarked that yesterday's meeting include two very interesting panel discussions. The first panel focused on information availability and included Jim Stimson, Natural Resource Information Service; Stu Kirkpatrick; Cadastral Mapping Program; and Dennis McKenna, DEQ Subdivision Program. He added that the Cadastral Mapping Program has the ability to map the entire state in an electronic format by parcel. This would provide a good visual of the land uses in Montana.

Mr. Kirkpatrick was asked to prepare a report on what will be necessary to complete the project. There are roughly 900,000 parcels in the state and currently 300,000 are in the system.

The second panel discussed the Attorney General Opinion (47 Op. Att'y Gen. 10 (1997)) which dealt with the issue of government lots. Prior to the subdivision law changing to 160 acres, this wasn't much of an issue because these lots are usually around 40 acres in size and were easily transferred and sold as government lots. The question arose as to whether government lots exist as legitimate tracts of record. There is still confusion regarding tracts of record which involve the underlying chain of title and whether parcels had been aggregated over time. County attorneys are interpreting the law in different ways. Mr. Kakuk suggested allowing government lots to be transferred without subdivision review because he believes that would force the counties to do more planning and not depend on subdivision review. He also referred to a mandatory planning bill which he had drafted for Rep. Lee from Bigfork. This 1991 legislation proposed mandatory planning in rapidly growing counties.

MR. SORENSEN provided copies of the 1998 EQC Growth Subcommittee Work Plan, **Exhibit 5**. The main project the subcommittee is addressing is planning for land use in Montana. They want to take the focus away from the subdivision law and emphasize planning. The Subcommittee has come up with a 4 step

process. Step one includes the status of planning in Montana. This step was addressed with the survey which has been completed. Step two will be comprehensive planning case studies. They will be looking at two groups of case studies at the next meeting. One panel will involve the larger counties which will probably be Yellowstone, Gallatin and Flathead Counties. The presenters will be county planners and planning board members and possibly some elected officials. The main objective will be to see how the rural planning efforts coordinate or integrate with the urban planning efforts. The second panel will be a rural panel to include Madison, Jefferson and Sweetgrass Counties. Step three will address what is needed to improve planning. Step four will involve how Montana can implement the tools needed to improve planning.

Motion/Vote: MR. TOLLEFSON MOVED THAT THE 1998 GROWTH SUBCOMMITTEE WORK PLAN BE ADOPTED. THE MOTION CARRIED UNANIMOUSLY.

SEN. MCCARTHY suggested that the Growth Subcommittee discussion on maintaining open space be dovetailed with the Water Policy Subcommittee discussion on conservation easements.

V STATUS REPORTS ON UNDERGROUND STORAGE TANK REMOVAL DEADLINES

► *Chris Knudsen, Helena EPA Office*

Ms. Knudsen explained that the Underground Storage Tank regulations are found in the amendments to the federal Hazardous and Solid Waste Act (RCRA). Existing tanks were given 10 years to comply with the new tank standards which were effective December 22, 1988. She provided a copy of a letter from the EPA to Mark Simonich, Director of DEQ, **Exhibit 6**. This letter explains that the deadline will be upheld. Extending the deadline wouldn't be fair to those persons who have already expended the funds to upgrade. Upgrading costs start at approximately \$12,700 for a three tank system. Total replacement of three tanks would cost between \$80,000 and \$100,000. Owners who wait until the last minute may face higher supply costs and order backlogs. She referred to a booklet entitled "Don't Wait Until 1998", **Exhibit 7**.

Tank owners may chose to close their facilities instead of upgrading. A proper closure involves draining the tank, cleaning, and filling with earth material. A site analysis is also necessary. If there is no contamination, the closure cost would be between \$5,000 to \$10,000.

EPA approved Montana's program with the exception of facilities located in Indian Country, which would include everything inside the boundaries of a reservation. Congress required EPA to implement the program in Indian Country and therefore they are not allowed to delegate that to a state. In January of this year there were 791 active and temporarily closed tanks in Indian Country.

When a violation is identified, the EPA has two enforcement tools. One is a field citation which carries low penalties of \$1500 or less. This is used for less significant violations. The other enforcement tool is an administrative penalty order. Their statutory maximum is \$10,000 per violation per day. If the violations are not corrected they can be referred to the Department of Justice for civil action.

There is a concern that some rural communities may be left without a retail source of gasoline following the December 1998 deadline. Other states have done some studies and found that there were very few communities that would be without a retail source of fuel in their town. Eastern Montana is a concern. An EPA grant has been provided to the DEQ to study this problem. The objective is to point out to the local communities that this will be a problem in their community and they need to come up with ideas for establishing a funding mechanism to keep the gas station viable. There is a small assistance program as well. There will be an ongoing need for leak detection evaluation and compliance. Additional handouts, Field Citations, **Exhibit 8** and Closing Underground Storage Tanks Brief Facts, **Exhibit 9**.

► *Theresa Blazicevich, DEQ UST Program*

Ms. Blazicevich remarked that leak detection requirements were phased in over a 5 year period and the tank design requirements were phased in over a 10 year period. She provided a handout entitled, "Strategy to Encourage Compliance with 1998 Underground Storage Tank Upgrade Requirements, **Exhibit 10**. The state regulations can be found in MCA 75-11-501 and ARM Title 17, Chapter 56. All tanks in the ground have to be monitored for release. This requirement has been in effect since December of 1993.

They provide an owner's manual which has an overview of all regulations and helpful brochures. The new tanks are guaranteed for 30 years, if installed correctly. Workshops, press releases and newsletters are also provided by the DEQ.

In 1988, there were approximately 20,000 underground storage tanks in Montana. Currently there are 5,600 tanks in use. Of those, 2,900 (51%) have been fully upgraded with corrosion protection and spill and overfill prevention. They expect 1200 upgrades this year and also expect that 1,500 tanks will not be upgraded by the deadline. These tanks will fall into three categories: 1) Temporary closure - this is allowed for up to 12 months; 2) Abandoned; and 3) Continued Operation - Noncompliance. State law enforcement is similar to the federal law with exception of field citation capabilities.

Strategies which they plan to adopt will require rule amendments and legislation. If the tank is not upgraded, they would not issue a tag for the next year because they do not want the distributor assuming a liability by filling the tank. This could be adopted by a rule amendment. The other three strategies would require legislation: 1) Funding for ongoing regulatory program - increased fees. 2) Third-party certification - inspections. 3) Environmental liens - site assessment.

Ms. Blazicevich remarked that a local gas station in Circle collects used oil and their tank will no longer be used after the deadline. The community is very concerned about this.

A copy of the DEQ's "Strategy to Encourage Compliance with 1998 UST Upgrade Requirements", **Exhibit 11**, was provided for Council members.

REP. HEAVY RUNNER asked for clarification of proposed legislation on increased fees. **Ms. Blazicevich** explained there is a \$20 annual fee for tanks under 1100 gallons and a \$50 annual fee for tanks over 1100. This is on a per tank basis. A bulk plant may only pay \$250 with an inspection taking an entire afternoon.

REP. HEAVY RUNNER further asked what discussion has taken place on abandonment. **Ms. Blazicevich** stated that they would have the state pay for the site assessment. This would take away the unknown liability of these tanks and may allow them to be sold.

REP. TASH asked about the program for above ground storage tanks and whether this was being used for an alternative. **Ms. Blazicevich** explained that there are fire code requirements for above ground tanks. She added that many smaller communities are going to above ground storage tanks.

MR. SNODDY asked if there were any plans to help the small owner preserve a family business. **Ms. Blazicevich** stated that the DEQ has been working with the Department of Commerce on a loan program. They have used oil overcharge money to buy down interest rates.

SEN. GROSFIELD asked if both the EPA and the state would place fines on the same party. **Ms. Knudsen** remarked that they coordinate so this doesn't happen.

SEN. GROSFIELD asked the range of sizes of tanks and who owned underground storage tanks besides gas stations. **Ms. Blazicevich** explained that they have tanks ranging from 50 gallons up to a million gallons but the typical gas station has mostly 5,000 to 10,000 gallon tanks. Most of the tanks are owned by gas stations but other owners include military facilities, truck transport businesses, airports, hospitals, schools, etc.

SEN. STANG asked what the situation would be for an owner who had hired a contractor who couldn't complete the project by the deadline. **Denise Mills, DEQ Remediation Division Administrator**, explained that to be fair to those who complied they don't believe it would be appropriate to allow out-of-compliance tanks to operate after December 22, 1998. They would work with the owners to put the tanks into temporary closure and develop a compliance plan.

SEN. STANG remarked that he had heard that the new tanks are not safer than the old tanks. **Ms. Blazicevich** stated that manufacturers are willing to warranty the tanks for 30 years and there was no warranty on the old tanks.

VI STATUS REPORT ON THE VOLUNTARY SUPERFUND CLEAN-UP PROGRAM

► Carol Fox, DEQ Remediation Division

Ms. Fox explained that a consensus bill passed in the last session that provided an alternative liability system under Superfund. This addressed the fact that orphan parties are responsible for contaminating sites. These are bankrupt or defunct parties who are not able to contribute to remediation efforts and now the state will

have to pick up their share. They have had one petition for this process and that has been from Montana Tunnels as a subsidiary of Pegasus Gold. An example of how the new liability allocation process would work would be a cleanup project that costs \$1 million. As the current site owner, Pegasus may only be fairly allocated 20% of the liability. This means that after cleanup, Pegasus could apply for reimbursement of \$800,000. This would come from an orphan share fund generated with revenues from the RIT taxes. Currently there is \$538,000 in the fund. There have been no expenses to date. Pegasus' bankruptcy has delayed the liability allocation process.

Their other major activity under SB 377 is that DEQ was given the authorization to promulgate rules on listing and delisting of Superfund sites. Rules have been drafted and are out for public comment. The hearing will be on June 5th.

The purpose of the Voluntary Cleanup Act is to streamline cleanups. This Act was passed by the 1995 Legislature and amended in 1997. She provided a handout entitled "Voluntary Cleanup and Redevelopment Act Update", **Exhibit 12**. This Act sunsets in 2001. The Department considers it a success and will be proposing its extension to the same sunset date as the orphan share liability allocation law, which would be 2005.

VII WATER RESEARCH UPDATE

► *Dorothy Bradley, Montana University System Water Center*

Ms. Bradley introduced **Marv Miller, Associate Director - Montana Tech**. She reported that in 1964, Congress set up 54 water centers at land grant institutions. Each state was given a certain amount of funds to pursue state specific research and education programs. The budget has now been regionalized.

She provided copies of brochures describing the accomplishments of the Water Center, **Exhibit 13**. They received a grant through EPA which allowed them to design a web presentation called "Montana Water". They shared one-third of the grant with NRIS to work on maps for the watershed coordinating portion of the project. Their newest presentation is on TMDLs which they are working on with citizens of the state and the university system.

The goals of the Water Center include: 1) Being useful to all sectors in the state and 2) Developing partnerships with the university system, government, and private sector. The whirling disease project is the best example since they have of a research program and lab on campus where all the entities work together.

A challenge facing the Water Center includes funding for state issues and research when there is no state money supporting that mandate. Another challenge is coordinating the various entities who are interested in water, including the USGS, Bureau of Reclamation, Bureau of Land Management and various state entities.

The EQC is mandated by law to oversee the work at the Water Center. She asked the Council to consider setting priorities. Much of their work is reactive. In the past, the EQC and the Water Policy Committee supported state funding if the University did its share. She asked the EQC to serve as an advocate for the Water Center.

They prepared a presentation for I-122 due to the requests of people calling their office for neutral information. During the work on this project, they discovered that very few people in the state had knowledge of mixing zones. This information is now on the internet.

State money is not available. The University System competes for private or national funds. Many of the federal grants require a state match. There is a lot of support in the University System for TMDLs. University teams could identify places that are in trouble and provide watershed, technical and scientific assistance. The state is required to do thousands of delineations of source water protection. The Water Center has the capability to teach students modeling in a coordinating manner at MSU, Montana Tech, and the University of Montana and have private sector mentorships to help students work independently in the summer.

Montana has huge growth problems. There is a huge student and science community that has the means to figure out the problems and how they can be contained. Unfortunately, the dollars are not available for the project.

► *Tom Patton, Montana Tech. Groundwater Assessment Program*

Mr. Patton provided a handout entitled “Ground-Water Assessment Program: Status Report”, **Exhibit 14**. Staff at the Ground-Water Information Center (GWIC) update records in databases on a daily basis. They also serve approximately 140 to 150 calls for information each month. The GWIC has information for almost 155,000 wells; water level measurements from about 5,500 wells; and high-quality data for about 3,500 wells. He referred to a map which showed the statewide distribution of wells, **Exhibit 15**. They have specifically visited certain areas and gathered information for this database. The areas are: Lower Yellowstone Area; Middle Yellowstone Area; Flathead Lake Area; and Lolo-Bitterroot Area. Since 1996, 1,280 customers have called the Center about 3,000 times for information. The general public calls about one time per incident. Other customers include water well drillers, industrial/commercial clients, engineering/technical firms, and government regulators and scientists.

The Ground-Water Characterization Program has well-visited approximately 1,400 wells in the Lower Yellowstone River Area, and almost 1,000 in the Flathead Lake Area and the Middle Yellowstone River Area. They have just begun work in the Lolo/Bitterroot Area and the Upper Clark Fork Area is on line to start in a year or so. The data received goes into the database and becomes available for the public to use.

The greatest challenge to the Ground-Water Assessment Program is to effectively plan for income that arrives more than 10 months after the Steering Committee sets a budget. Program income is based on percentages

of annual Resource Indemnity Trust and Metalliferous Tax receipts which are primarily collected between March and May. He asked the Council to consider supporting a constant level of funding for this program.

REP. HEAVY RUNNER questioned whether they coordinate with other groups. **Mr. Patton** remarked that they have sent data to various groups and that coordination is a Steering Committee issue. For example, in the Beaverhead Groundwater Study, DNRC had the opportunity to drill \$300,000 worth of wells. They are obtaining information from the wells for the Center. All the data from the Flint Creek Ground-Water Study has been given to the Center.

MR. SORENSEN asked if the nonpoint source septic issue in Gallatin County was modeled after other studies and whether it was being used elsewhere in the state. **Ms. Bradley** explained that Kalispell and the Bitterroot area are working on like projects. She works with the group that deals with the 319 Program funds for nonpoint source pollution which are now turning into TMDL interests also. In Gallatin County, they tried to gather all available information and put it into layers that are understandable by developers, the planning community and the general public to determine what land is septic system suitable.

CO-CHAIR MESAROS asked if the web site contained drought information. **Ms. Bradley** remarked that they are not working on drought issues. Due to loss of funds, they lost their climatologist position at MSU several years ago. Volunteers have worked on the dataset; however, they do not have good coordinated information on droughts at this time.

Jim Stimson, NRIS, explained that they are one of the partners in the drought monitoring program with DNRC. They maintain a page on the web which is very user friendly. They have an area for current conditions. The missing piece is a precipitation index. They have been working with Dr. Kelly Redman, Desert Research Institute, on trying to replace the Palmer Drought Severity Index Maps.

Ms. Bradley remarked that they would like more directives from the EQC. CO-CHAIR MESAROS stated they would consider more directives for the Water Center.

VIII BLACKFOOT RIVER LAND SLIDE UPDATE

Ed Thamke, DEQ, provided a video presentation of the significant land slide temporarily blocking the Blackfoot River near Ovando. He explained that the landslide broke on a road cut on private property. The elevation of the river channel in this area is about 4,000 feet. The river channel is rerouting itself through the tree line. All the trees that were on the river bank at the end of the point bar are now saturated and as the root zone becomes saturated with water, the trees will die. There seemed to be a fair amount of timber on the hill slide. The Blackfoot Valley is comprised of glacial tills and clays that are prone to landslides. The river is currently sheet flowing over a wide area. As of the 29th of April, no head cutting had taken place. The preferential discharge point has not been established. This is helpful in that the water is not coming out in one spot and providing a lot of energy in one area. Since the energy is being dissipated over a wider area, it

has been less catastrophic. The plug is comprised of approximately a quarter of a million cubic yards and is about 175 feet across and 30 to 40 feet deep and 50 to 60 feet along the river channel. The water is working itself around the plug, across the forest floor, and then dropping. When the slide occurred, the velocity was about a thousand cubic feet per second. On May 1st, it was about 3,000 cubic feet per second. Even though the river velocity has come up about 2,000 cubic feet per second, the landslide is relatively stable. The size of lake is the same and the discharge remains the same.

They will be flying over the area again in June. They will make a decision, along with FWP, DNRC and other agencies, on whether anything should be done. They want to work on stabilization which may include planting willows and riparian growth. This slide was an act of nature and they are concerned about future slides which will affect the health of the river and private property in the area.

► *Larry Peterman, FWP*

Mr. Peterman remarked that they were fortunate to have resources at the University of Montana that were able to put the landslide in perspective of the entire river system. The Blackfoot River is naturally a sediment rich river. Fish populations respond to a landslide in different ways. Problems associated with this area are that it is a high nutrient area and the water temperature is warm. The North Fork of the Blackfoot changes the character of the river by adding a flow of clean, cold water. In the lower part of the Blackfoot River, there are 700 to 800 fish per mile. They are concerned with the long term stability of the landslide. If the river keeps its existing alignment, the impacts will be minimal. They will be placing signs at the upstream access points to discourage floating through this part of the river because the trees are too close together for a raft to go through.

SEN. GROSFIELD asked about the costs involved with this landslide and what area of the budget is used for such a project.

Mr. Thamke explained that there was no budget for the landslide. The landslide was an act of God. When there is a violator, the DEQ investigates. The state cost to date is minimal due to in kind contributions from private and public organizations. Plum Creek has volunteered to provide digital elevation mapping of the area which will provide excellent mapping of the slide. They will have a good idea of the progression of the landslide.

The Council may want to look into what agency is responsible to investigate this type of situation.

MR. SORENSEN stated that Plum Creek is cooperating in this effort and costs have been incurred by the company.

IX BULL TROUT MANAGEMENT UPDATE - Larry Peterman, FWP

Mr. Peterman remarked that he was responding to the letter from SEN. CRISMORE, **Exhibit 16**. It is very likely that bull trout will be listed under the Endangered Species Act. This may occur in June of this year. In the past, anglers have played a role in the decline of species.

Question 1: How effective are sport fishing regulations and enforcement programs regarding the incidental take of bull trout and other closed fish species?

Mr. Peterman stated that the Department has dealt with this question for many years in their fishing regulations. The concern is whether anglers can identify bull trout. They have been selectively reducing the harvest on bull trout for the past 20 years and encouraging harvest on other species. In Region I - Kalispell and Region II - Missoula, they conducted a survey of anglers which tested their ability to identify different trout species. The results showed that about half of the anglers were not able to correctly identify all species of trout. They had particular problems identifying closely related species such as westslope cutthroat and rainbow trout; and bull trout and brook trout.

They increased enforcement efforts in key spawning tributaries in bull trout areas. Wardens also made presentations on bull trout restoration and identification in schools and at various meetings. They have prepared a Bull Trout Public Information/Action Plan, **Exhibit 17**. Strategy No. 1 included developing and distributing bull trout identification cards and increasing warden patrols and angler contacts. He provided an example of the bull trout packet, **Exhibit 18**. Alberta came up with a catch phrase for the key characteristic of the dorsal fin on a bull trout: "If there's no black, put it back." Strategy No. 2 was to increase media contacts on bull trout issues. Strategy No. 3 involved working with fishing/hunting license agents to distribute materials. Strategy No. 4 was to produce a video targeted to 4th graders. Strategy No. 5 was to develop a brochure which outlines steps the public can take to help bull trout. Strategy No. 6 involved adding bull trout information to their fishing regulations booklet. Strategy No. 7 was to work with school students. Strategy No. 8 involved increasing general presentations to groups and focusing on a native fish ecosystem message. Strategy No. 9 was to prepare place mats for restaurants which have an identification key for bull trout. Strategy No. 10 involved developing and presenting a major fair display on bull trout. This was done a couple of years ago. They had a large number of interested people visit their fair booth - approximately 21,000 in Missoula and 11,000 in Kalispell.

SEN. CRISMORE asked how the Endangered Species Act (ESA) would be enforced for bull trout. **Mr. Peterman** explained that there are two categories. An accidental take is treated as a misdemeanor. However, people who intentionally target spawning runs and poach large fish, will be involved in a criminal activity. If a person is caught with 3 bull trout over 18 inches in length, it will be a felony. This is under state statute. He wasn't sure how this would be treated under the ESA.

SEN. CRISMORE asked whether the warden would cite the person under the ESA. **Mr. Peterman** stated that the warden would cite this under a state statute of taking a closed species.

SEN. CRISMORE asked if they believed they would have to close waters such as the Kootenai River to fishing under this Act. **Mr. Peterman** stated there was a rule in the listing packing which is called the 4D Rule. In the proposed listing, there was a 4D Rule which would allow sport fishing to continue. They believed that the state statutes were restrictive enough to ensure that states were not managing to intentionally harvest bull trout. The activities that were going on were reasonable activities to try to minimize the incidental take. If this carries over in the final rule, sport fishing will be allowed to continue. The education programs will need to continue. They are allowing harvest in Swan Lake where they have a one fish limit on bull trout. Swan Lake has a recovered population.

MR. SORENSEN asked the status of the roundtable listing team. **Mr. Peterman** commented that they have been struggling to come up with a restoration plan. This is a complex and controversial issue. The draft plan is completed with exception of the land management section. The draft plan was to be submitted for public comment. The proposed June listing complicates this matter.

MS. SOUVIGNEY asked how they decide if catch and release has had some results. **Mr. Peterman** stated they select areas to test certain regulations. If a regulation works in a certain number of areas, they may apply that regulation to other areas and not necessarily follow up once a model is developed. Catch and release is usually targeted at a specific problem or arrive at a desired result. Major fisheries are sampled either annually or every two years. They then evaluate the effectiveness of the regulations. There are instances where catch and release regulations have been removed, although this doesn't happen very often.

MR. SNODDY stated that in certain areas, such as the Copper Creek area, anglers have a 95% chance of catching a listed species. Also, there doesn't seem to be a coordinated effort to protect or enhance the fishery in the Upper Blackfoot River Basin. **Mr. Peterman** stated that with the exception of Swan Lake, all bull trout harvest was closed. In critical spawning areas for bull trout, they have closed all fishing. This involves about four tributaries in the Swan area, and a couple in the Kootenai and Flathead areas. The South Fork of the Flathead is strictly a native fish community with bull trout and westslope cutthroat as the primary game fish. They allow a harvest on westslope cutthroat.

MR. SNODDY questioned whether there would be an advantage to focusing on strictly native fisheries and enhancing populations there over trying to force reintroduction in mixed species environments. **Mr. Peterman** stated that was a good strategy. They have an ongoing program to identify pure populations of west slope cut throat. Westslope cutthroat can fairly easily hybridize with rainbow.

Question No. 2: What is the effectiveness of education programs regarding identification of fish species? **Mr. Peterman** remarked that the follow up study was being conducted at the present time.

Question No. 3: What is the mortality rate of fish caught and released by anglers in a catch-and-release situation. **Mr. Peterman** stated that varied from 3% to 20%. When bait is left unattended or the fish is deeply hooked, the mortality could be as high as 18% to 20% in a lake area. Other variables that affect fish mortality are the species and the water temperature. Warmer waters have higher mortality rates than colder waters. Experienced anglers who use artificial bait may be able to catch and release with a mortality rate of 3% to 5%. For calculation purposes they use an 8% mortality rate.

SEN. STANG asked why barbless hooks are not mandated. **Mr. Peterman** stated that the main difference in mortality is between bait fishing and artificial lures. It is easier to release fish with a barbless hook. They have not mandated this in the regulations but are using an educational approach.

Question No. 4: What is the status of fish hatchery operations and stocking of nonnative fish species? **Mr. Peterman** explained that they provide an annual fish stocking report. He had not brought the report with him but offered to provide copies for Council members. A concern for stocking is that some species hybridize with native fish. Rainbow hybridize with cutthroat; brook trout hybridize with bull trout. Currently, no brook trout are stocked west of the divide. Rainbow are stocked in lakes that do not have pure populations of cutthroat. A lot of private ponds are being built in areas that have primarily native fish. They worked with a private aqua culturist in the Upper Yellowstone area. They now have a commercial source of Yellowstone cutthroat for private pond owners. They have not been able to establish a commercial source for westslope cutthroat west of the divide.

SEN. CRISMORE remarked that introduced fish could be the same as pollution. **Mr. Peterman** stated that in certain areas introduced fish are very problematic to native fish. The restoration group has prepared several papers. One paper included the role of hatcheries and the restoration of bull trout. The second paper was the removal and suppression of nonnative species. They are working on rehabilitating a drainage which would involve removing the nonnative fish. There needs to be a barrier where the nonnative species cannot move back.

MS. SOUVIGNEY asked what budget cuts they may be facing. **Mr. Peterman** stated that there may not be a license fee increase until the year 2003.

Public Comment

Cary Hegreberg, Montana Wood Products Association, stated that they helped initiate and develop the forestry BMPs. They helped develop and fund the training workshops to help loggers, foresters, and landowners understand the importance in the implementation of BMPs. They were also instrumental in passing the TMDL legislation in the 97 Legislative Session. Bull trout protection is a high priority for their industry. The land management strategy is complex and there has been disagreement in this area. The evidence points very clearly to the presence of non-native species as being a major detriment to bull trout

recovery as it does with west slope cut throat trout. The Swan Valley has some of the healthiest populations of bull trout in the northwest. The Swan Valley has been intensively managed for timber harvest for 100 years. The bull trout population is healthy in the Swan Valley because there have not been invasions of exotic species.

X FWP WILDLIFE PROGRAMMATIC EIS UPDATE

John McCarthy, Fish Wildlife and Parks, provided Council members with the Executive Summary of the Programmatic EIS, **Exhibit 19**. They are hoping to systematically evaluate the major impacts of changing their program. They began the process in 1991 on advice of their legal counsel. The wildlife programs of other states were being challenged both legally and by initiative. Scoping meetings were held in 1992. The goals of the project were to implement a program that was responsible to changing social needs and demographics in the state. People wanted more input in their programs. They wanted to make sure that their program was in compliance with MEPA. In 1994, 5 alternatives were developed and sent to their management team. They were rejected by the management team as being too narrow in scope. They also believed that they would be unable to stand up to the environmental analysis required by an EIS. In 1995, they worked with focus groups and persons in the department to make sure the issues were still relevant. A copy was given to a select portion of the public and was also provided within the department. Changes were made and a draft was ready in December of 1996. The Director decided to hold this EIS back so all the other programmatic EISs could be released at the same time. The public would be able to review all the programs at one time.

The EIS identifies a proposed action which states that the Montana Fish, Wildlife, and Parks (FWP) proposes to implement a long term wildlife management program that will consider all existing sub-programs, meet FWP's legal mandate in a manner that allows the agency to adapt to a changing future and provide direction to the program over the next 10 years. They received 1300 public comments which were broken down into six issues around which their alternatives were developed. The major issues addressed were: 1) access, 2) recreational opportunity, 3) species habitat management, 4) commercial uses of wildlife, 5) landowner relationships, and 6) staffing and funding of the program.

The first alternative is the "no action" alternative which would leave the program as it stands today. This program was developed over 50 years of public input and legislative mandates and has withstood the test of time. The second alternative assumes that people are looking for less government in their lives. This alternative evaluates the effects of less government. This would limit their activities to the essential services laid out under the Constitution. The third alternative assumes that with the increased demand for opportunities and input into the program, the best method of managing wildlife in Montana would be to adopt a broader habitat/ecosystem protection program. The fourth alternative assumes that citizens expect free market and interagency cooperation to play a major role in the allocation of wildlife and wildlife recreation. It examines an expanded use of commercial activities on private lands to provide wildlife recreation and more intensive management of public lands and wildlife on public lands. The fifth alternative

would totally increase services and recreational opportunities. It would require the department to partition opportunity. This may actually decrease hunting opportunities for their traditional constituents.

They are currently gathering public input on the draft. Seven meetings have been set up within the state. Comments will be taken until June 30th.

CO-CHAIR MESAROS remarked that after six years of work on the EIS the costs are approximately \$500,000. He questioned why the EIS is taking so long and why the cost is so high. **Mr. McCarthy** explained that no other state has prepared such an EIS. The learning curve was high. The first five alternatives were viewed by the management team as being too narrow. The estimated cost was \$600,000 so they are within budget at this time. The length of time is equivalent to the time frame used by the State Lands in preparing its logging study.

CO-CHAIR MESAROS questioned whether the scope is still pertinent and adequate after this length of time. **Mr. McCarthy** stated they kept working with the public during this time. They also made sure that the issues were still relevant internally.

CO-CHAIR MESAROS asked the time line for completion of the project. **Mr. McCarthy** explained that the Director would like to have a record of decision on this and the other documents by the end of September.

MR. SNODDY asked if the Department had a preferred alternative. **Mr. McCarthy** stated they chose not to have a preferred alternative. They believe each alternative is a viable method of meeting their mandates and managing wildlife in Montana. The final EIS will have a preferred alternative. It could be one of the alternatives or a combination of the five alternatives.

MR. SNODDY questioned how the alternative would be chosen. **Mr. McCarthy** remarked that a lot of the comments received have been that parts of certain alternatives were preferred. He believed they would end up with a combination of alternatives based on public comments received.

CO CHAIR COCCHIARELLA asked if they would recommend this process to other agencies or states. **Mr. McCarthy** commented that there are a number of states waiting for this project to be completed. They would like to use this as a model. It will be marketable and can be implemented. The cost is already paying off in the redirection of funding within the department and in developing output for the public. In regard to their application for federal aid, by using this document they can cut a two-year project down to a one-year project.

MS. SOUVIGNEY asked the amount of additional costs needed before the project was completed. **Mr. McCarthy** remarked that the largest cost would be distribution if it needed to be reprinted. The full documents cost approximately \$2.50 per document plus postage. The project is within \$10,000 of

completion. They will incorporate the large document into the record of decision. They have received 500 requests for executive summaries, but meeting attendance has been minimal.

SEN. GROSFIELD remarked that they are working on a document relating to fisheries and also on a document relating to the future of state parks in Montana. He asked if the executive summaries were prepared on those two documents. **Mr. McCarthy** stated that they were.

SEN. GROSFIELD remarked that these three documents could dramatically change the Department's function and budget. **Mr. Peterman** explained that the fisheries document was different in that it looked at their existing programs which included their habitat programs, fish management programs, fishing access and aquatic education. It outlines the issues they are facing within those programs and asks for public comment on the critical issues. They have been working on this document for nine months and have approximately \$20,000 into the project. The State Parks document is somewhere in between the fisheries document and the Wildlife Programmatic EIS.

SEN. GROSFIELD remarked that as a member of this Council and the Legislature he was uncomfortable with the major policy changes being addressed in the documents. He suggested that the Council have a more thorough briefing of the three documents. He questioned the budget implications and fee increases. He suggested that the alternatives provide more budget information.

CO CHAIR COCCHIARELLA raised a concern about being left out of the communication in this matter.

MR. SORENSEN asked if the Department could provide budget information with the alternatives. **Mr. McCarthy** explained that Roger Lloyd of the Legislative Fiscal Analyst Office asked for budget information. It was the Director's decision that until an alternative is chosen, it would be difficult for him to know what he would be requesting from the next legislative session. Actual numbers are not provided for the alternatives, but they do indicate where additional funding would be required or where less funding would be needed. Some of the programs would take 10 years to implement. The budgets would need to be put together when they go to the Legislature asking for funds.

MR. SORENSEN believed that some monetary ranges could be placed on the alternatives.

MR. EVERTS stated that given the time line involved with the comment period of the document, his staff would work with the Legislative Finance Division staff and FWP to come up with answers to the questions which were being raised. This would be provided in summary format and sent to Council members by the end of the month. Council members could make direct comments or have a subcommittee hear a presentation before the next Council meeting.

SEN. GROSFIELD asked to have this issue on the next meeting agenda.

CO-CHAIR MESAROS remarked that he had been asked why the publications for rules and regulations were printed in Canada. **Mr. Peterman** stated that since the state follows standard bidding procedures, they are not free to choose who they want to do the printing. This also would include the lowest bid. He agreed to provide information on how printing bids are handled.

XI SELF AUDIT IMPLEMENTATION UPDATE - MONTANA REFINING CO.

Dexter Busby, Montana Refining Company, remarked that during the months of September and October of 1997 they spent in excess of 150 man hours providing data and information to the consultants conducting their company self audit. During the week of October 27th they spent between 150 to 200 man hours in the refinery providing information. The scope of their audit covered Emergency Preparedness and Community Right to Know Sections 311, 312, 313, OPA 90, the SPCC Programs, and RCRA. It also covered TOSCA, Underground Tanks, the Asbestos Act, the Clean Water Act, and the Clean Air Act. Each program has employee training requirements and record keeping requirements for employee training. They all have reporting and other record keeping requirements. The contract for their company was in excess of \$250,000 and is still ongoing. Their first report was a verbal report in early November. The first draft of a written report was completed in January. They have not received the final report. They are in the process of implementing the recommendations from the auditors as well as any BMPs that they felt were truly best management practices for their facilities.

They reported two violations to the state. One dealt with air and the other with water. They reported an additional item to the EPA. One of the items they reported was that a portion of their annual report for air was missing. It was in the file, but was left off the annual air report. The other item dealt with their MPDS water permit. There was a requirement in the boilerplate portion of that permit that was started but not completed.

They were not sure of the actual reporting time requirement. Is it when you first become aware that there may be a problem, when the preliminary report is received from the auditor, or when the final report is due? The law is vague. They started their investigation immediately and notified the DEQ.

Another concern they have is which permit requirements are subject to this law. They believed that a emission requirement was not discoverable under an audit and that a paperwork requirement would be effective under the audit.

John Arrigo, Department of Environmental Quality, stated that they did have difficulty interpreting some of the language in the audit law. Section 75-1-1205(3) states that documents, communications, compliance data, reports or other information required to be collected, developed, maintained or reported to the department according to state law, rule or permit are not covered by the provisions on this part. Thus if a company failed to submit a report, that report would not be subject to the requirements of that part. He

believed that that report would then not be eligible for immunity. A report is not eligible for an immunity but violations would be eligible. The violation is that they failed to submit the report.

If the report revealed that their emissions exceeded a permit standard, that amount exceeded is a violation and would not be eligible for immunity. The reporting requirement violation is eligible for immunity, but the data contained in the report, if it reveals a violation, is not eligible for immunity.

The boilerplate language in the permit required submittal of a storm water pollution prevention plan. The permit was not specific as to the date of when it had to be submitted.

SEN. MCCARTHY asked if the department could rewrite the rules or whether the bill needed to be amended. **Mr. Arrigo** stated that there was no rule making authority granted. Since the legislation sunsets in 2001, he didn't see a need to amend the legislation.

Mr. Busby believed there would be an effort to extend the 2001 sunset and at that point minor changes should be made.

MS. SOUVIGNEY asked if the DEQ's interpretation meant that a company which failed to meet a reporting requirement of a permit can gain immunity from any penalties if it is revealed in a self audit, assuming other conditions of qualifying for immunity were met. **Mr. Arrigo** agreed but clarified that in those instances there would be multiple violations. One is the failure to report and the second is the exceeded amount. If a water permit requires monitoring on a monthly basis and certain limits are set out, the company can report that they failed to do the monitoring and then report the data, if it was collected. If the data shows that they exceeded the limit, this would be another violation. The reporting requirement is eligible for immunity and the amount that was exceeded is not.

REP. BEAUDRY asked the difference between the state audit and the type of audit which Montana Refinery had conducted. **Mr. Busby** explained that the state audit is narrower in scope. The auditors they contracted were familiar with multiple facets of the requirements and were much more experienced than state auditors. The auditors came up with a lot of BMPs. There was a lot of backup information that should be in their files.

XII OTHER BUSINESS

CO-CHAIR MESAROS remarked that they should devote a portion of the next meeting to the FWP EIS.

MS. SOUVIGNEY asked if they might receive more information about who is using the water related services in the state. MR. EVERTS stated that he will work with the research community to come up with more information on this matter. MS. WILLIAMS remarked that the fourth statutory update is the renewable resource program. The Water Policy Subcommittee is drafting the Water Policy Report to the Legislature.

Staff will be summarizing the updates in a report to Subcommittee members and the Subcommittee will then report to the full Council.

SEN. GROSFIELD stated that **Ms. Bradley** asked for specific recommendations. He believed that this is an opportunity which the Council should follow up on. He also believed the Council should be receiving further reports on the Underground Storage Tank concerns. With up to 2,000 tanks not in compliance by the end of the year, this will be a legislative issue in the next session. The Council may want to look at some proposals.

CO-CHAIR COCCHIARELLA requested that when presentations are made to the Subcommittees, only a highlight of the presentation be given to the full Council. She added that perhaps the agenda needed to allow more time for Subcommittee updates.

1. Kendall Mine Water Issue Update/Work Plan Element

CO-CHAIR COCCHIARELLA remarked that the Kendall Mine topic is on the plan of action adopted by the Council for the interim. She added that the Council should plan some action or time to address the Kendall Mine Water Issue. An option would be to travel to Lewistown, have a hearing, and tour the mine site. Another option would be to receive an updated presentation at a future Subcommittee or full Council meeting.

MS. WILLIAMS stated that if the Council decided to travel to the site, but could not do so until late July or early August, there might be some communication that staff could help draft.

REP. TASH asked that this be handled with some expediency.

SEN. MCCARTHY suggested that prior to a tour, there be a presentation so that the members are aware of the issues. It was her understanding that Directors Simonich and Clinch wanted to provide information to the Council. She suggested that this take place before the tour of the mine.

CO CHAIR COCCHIARELLA asked if the Council was interested in a Lewistown trip sometime in late July.

SEN. GROSFIELD questioned whether this was a large enough issue for a two-day meeting in Lewistown. CO CHAIR COCCHIARELLA remarked that the topics are far reaching and would deal with water rights and growth management.

MR. SORENSEN raised a concern about responding to a neighborhood issue. He understood the Council to be more of a policy group. He didn't believe the Council should be involved in a public hearing.

REP. TASH added that the administrative hearing process is well defined and the Council should not be giving the perception that their purpose is to mitigate concerns.

SEN. MCCARTHY stated that at yesterday's Water Policy Subcommittee meeting one party took advantage of using a public forum to get their message to the press.

CO CHAIR COCCHIARELLA stated they needed to provide the opportunity for fairness. The Council decided to have the Kendall Mine Update on their agenda for the interim. There was no information from either agency or Canyon Resources at yesterday's Subcommittee meeting. Since there was no consensus on the issue, CO CHAIR COCCHIARELLA stated that she and CO-CHAIR MESAROS would confer and communicate with Council members on the topic.

MR. SORENSEN explained that members of the Growth Subcommittee would be participating in a public television program on growth and land use. This would be simulcast from Bozeman and Missoula on May 19th at 8:00 p.m.

XIII. ADJOURNMENT

There being no further business, the meeting adjourned at 5:00 p.m.